

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	
Escalante City)	Facility I.D. No. 19742
)	NAL/Acct. No.: MB-20104141002
For Renewal of License for)	FRN: 0009113721
FM Translator Station K237AD)	File Nos.: BRFT-20050408AAE
Escalante, Utah)	BRFT-20070301AAG

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 12, 2010

Released: March 15, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned applications of Escalante City (the “Licensee”) for renewal of its license for FM translator Station K237AD, Escalante, Utah (the “Station”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Audio Division, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules,³ by failing to timely file license renewal applications for the Station, and willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in the unauthorized operation of the Station after its authorization had expired. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000), and we grant the captioned K237AD renewal applications.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”⁵ This Licensee failed to timely file license renewal applications for the Station during the last two renewal cycles.

3. During the previous license term for Utah stations, an application for renewal of the Station’s license should have been filed by June 1, 1997, four months prior to the Station’s October 1, 1997, license expiration date, but was not. The Licensee did not file the renewal application until April 8, 2005, more

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 U.S.C. § 301.

⁵ 47 C.F.R. § 73.3539(a).

than seven years after the Station's license had expired, and failed to request and obtain Special Temporary Authority ("STA") to continue Station operation. The Licensee provides no explanation for its failure to timely file the K237AD license renewal application.

4. During the current license renewal cycle for Utah broadcast stations, a supplemental license renewal application should have been filed by June 1, 2005, four months prior to the October 1, 2005, expiration date for Utah stations, but was not.⁶ The Licensee did not file such an application until March 1, 2007,⁷ seventeen months after the Utah station licenses had expired, and again failed to request and obtain STA to continue Station operation. The Licensee explains that the second failure to timely file for renewal of the Station's license is "simply an oversight."⁸

III. DISCUSSION

5. *Proposed Forfeiture.* In this case, the Licensee has failed to timely file license renewal applications for the Station, as required by Section 73.3539(a) of the Rules, during two separate renewal cycles. Moreover, during the Licensee's first renewal cycle, it continued operating the Station for more than seven years after its license had expired on October 1, 1997, before filing the appropriate renewal application and seeking an STA to so operate, in violation of Section 301 of the Act. Moreover, it continued operating the Station for seventeen months after Utah station licenses expired on October 1, 2005, before filing the appropriate supplemental renewal application, also in violation of Section 301 of the Act. Licensees are obligated to comply fully with the Rules, including timely filing the Station's renewal application and maintaining in effect the Station authorization.⁹ It did not do so during two license renewal cycles.

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with

⁶ A licensee whose renewal application is in deferred status must file a supplemental renewal application on the date a regular renewal application would otherwise be due. See *Faith Center, Inc.*, Memorandum Opinion and Order, 99 FCC 2d 1164 (1984), quoting *Carlisle Broadcasting Associates*, Memorandum Opinion and Order, 59 FCC 2d 885 (1976).

⁷ See BRFT-20070319ABV.

⁸ File No. BRFT-200700301AAG, Exhibit 30.

⁹ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

¹⁰ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. 1.80(a)(1).

¹¹ 47 U.S.C. § 312(f)(1).

¹² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁴

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁵ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁶ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁷

8. In this case, the Licensee has failed to timely file license renewal applications for the Station, as required by Section 73.3539(a) of the Rules, during two separate renewal cycles. Moreover, during the Licensee's first renewal cycle, it continued operating the Station for more than seven years after its license had expired on October 1, 1997, before filing the appropriate renewal application and seeking an STA to so operate, in violation of Section 301 of the Act. Moreover, it continued operating the Station for seventeen months after Utah station licenses expired on October 1, 2005, before filing the appropriate supplemental renewal application. Nevertheless, because it had previously been licensed to operate Station K237AD, the transgression is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. In recent decisions, we have assessed forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act.¹⁸ Therefore, the violations here would warrant a total forfeiture amount of \$500. However, the Licensee here twice failed to file a timely license renewal application for the Station, and twice engaged in extended periods of unauthorized operation after the Station's license had expired. Taking into account these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to one thousand dollars (\$1,000) each for the late license renewal application filings and for the two separate periods of unauthorized operation. Thus, we propose forfeiture in the total amount of four thousand dollars (\$4,000).¹⁹

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁶ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁷ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁸ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing sua sponte forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

¹⁹ See, e.g., *Michael G. Lewis*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 13939, 13941 (MB 2008) (\$1,000 Notice of Apparent Liability issued to licensee that failed to file a timely renewal application and continued Station operations for more than two and one-half years before filing the appropriate renewal application, never seeking STA to so operate). The Licensee here, as noted, twice failed to file timely license renewal applications and engaged in extended periods of unauthorized operation.

9. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²⁰ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²¹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²²

10. This case presents a fairly close call under this statutory license renewal standard, as the Licensee here clearly has had repeated and continuing violations of not only the Commission's Rules but also the Communications Act. On balance, however, we find that the Licensee's violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute “serious violations” warranting designation for evidentiary hearing.²³ Moreover, although again a close call here, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²⁴ Further, we find that FM translator Station K237AD served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Escalante City is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated violation of Section 73.3539 of the Commission's Rules and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

12. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Escalante City SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

²⁰ 47 U.S.C. § 309(k).

²¹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ *See, e.g., Discussion Radio, Inc.* Memorandum Opinion and Order, 19 FCC Rcd 7433, 7440-41 (2004) (“close call” under statutory renewal standard when station violated Section 301 of the Act and Sections 73.3539 and 73.3526 [public inspection file] of the Rules, but on balance a forfeiture of \$16,500 was imposed).

²⁴ For example, we do not find here that the Licensee's Station operation “was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules.” *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

13. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵

17. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Escalante City for FM translator Station K237AD, Escalante, Utah (File Nos. BRFT-20050408AAE and BRFT-20070301AAG) ARE GRANTED.

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Escalante City, P.O. Box 189, Escalante, Utah 84726, and to its contact representative, Mauri Parsons, P.O. Box 473, Monroe, Utah 84754.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁵ See 47 C.F.R. § 1.1914.